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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 HAFID TAHRAOUI,

7 Plaintiff,

8 v.

9 FRANKLIN BROWN, et al.,

10 Defendants.

CASE NO. C11-5901BHS

ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS AND
REMANDING CASE

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12 This matter comes before the Court on Defendants Pierce County, Erin Orbits
13 (“Orbits”), Franklin Brown (“Brown”), and Rustin Wilder’s (“Wilder”) (“Original
14 Defendants”) motion to dismiss (Dkt. 4); Plaintiff Hafid Tahraoui’s (“Tahraoui”) motion
15 to amend complaint and extend deadline (Dkt. 10); Tahraoui’s motion to accept late filing
16 (Dkt. 11); and Tahraoui’s First Amended Complaint (Dkt. 13). The Court has reviewed
17 the briefs filed in support of and in opposition to the motions and the remainder of the file
18 and hereby grants in part the motion to dismiss and remands the case for the reasons
19 stated herein.

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21 **I. PROCEDURAL HISTORY**

22 On July 11, 2011, Tahraoui filed a civil rights complaint against the Original
23 Defendants in the Peirce County Superior Court for the state of Washington. Dkt. 1. On
24 November 2, 2011, the Original Defendants removed the matter to this Court. *Id.*
25 Tahraoui alleged violations of the Fourth and Fourteenth Amendments, a civil conspiracy
26 under 42 U.S.C. § 1985, and various violations of state law. *Id.*

27 On November 9, 2011, the Original Defendants filed a motion to dismiss the
28 complaint. Dkt. 4. On November 25, 2011, Tahraoui filed a motion to amend complaint

1 and to extend deadline (Dkt. 10) and a motion to accept late filing (Dkt. 11). Tahraoui
2 requested that the Court renote the motion to dismiss to January 27, 2012. *Id.* On
3 January 25, 2012, Tahraoui filed a letter asserting that he was having problems
4 responding to Defendants' motion due to severe weather. Dkt. 13. On February 9, 2012
5 Tahraoui filed a First Amended Complaint ("FAC"). Dkt. 13.

6 In the FAC, Tahraoui names Brown, Wilder, Paul Pastor ("Pastor"), Montgomery
7 Minion ("Minion"), Foster, Pierce County, and Pierce County Sheriff's Office as
8 defendants ("Defendants"). *Id.* Tahraoui alleges violations of the First, Fourth, Fifth, and
9 Fourteenth Amendments as well as numerous state law causes of action. *Id.*

10 **II. FACTUAL BACKGROUND**

11 On May 10, 2008, Tahraoui went to a Pierce County residence and purchased a
12 trailer hitch from a person named Shelly. FAC, ¶¶ 11-12. On May 11, 2008, Tahraoui
13 received a phone call from a person named Pate who informed Tahraoui that Pate owned
14 the hitch, Shelly had made a mistake in selling it to Tahraoui, and Pate wanted the hitch
15 back. *Id.* ¶ 13. Tahraoui refused to give the hitch back, and Pate called the Pierce County
16 Sheriff's Office. *Id.* ¶ 14. Deputy Brown was dispatched to investigate Pate's allegation
17 of theft. *Id.* Tahraoui alleges that Brown called Tahraoui and threatened to put Tahraoui
18 in jail if he did not return the hitch. *Id.* ¶ 16.

19 On May 12, 2008, Tahraoui contacted the Pierce County Sheriff's Office to
20 complain about Brown's conduct. *Id.* ¶ 20. Lieutenant Wilder returned Tahraoui's call to
21 investigate the complaint. *Id.* ¶ 21. Tahraoui alleges that Wilder threatened to arrest
22 Tahraoui for theft and extortion and that Wilder recommended that the Pierce County
23 Prosecutor should file charges against Tahraoui. *Id.* ¶¶ 22-23.

24 On May 13, 2008, Tahraoui contacted the Piece County Executive's Office to
25 complain about Brown and Wilder's conduct. *Id.* ¶ 24.
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1 On May 22, 2008, Tahraoui alleges that Deputies Minion and Foster traveled to
2 Tahraoui's work to arrest Tahraoui. *Id.* ¶ 25. Tahraoui was not at work that day, but
3 Minion called Tahraoui to inform Tahraoui that Tahraoui had been charged with theft and
4 would be arrested. *Id.* ¶¶ 25–26.

5 On March 4, 2009, Tahraoui received a criminal complaint charging him with
6 theft. *Id.* ¶ 29. On March 13, 2009, Tahraoui was arraigned on the charge and pled not
7 guilty. *Id.* ¶ 30. On May 5, 2009, the charges were dismissed. *Id.*

8 III. DISCUSSION

9 As a threshold matter the Court denies Tahraoui's motion to extend deadline as
10 moot, grants Tahraoui's motion to accept the late filing, and considers Tahraoui's FAC as
11 his substantive response to the motion to dismiss.

12 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
13 Procedure may be based on either the lack of a cognizable legal theory or the absence of
14 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901
15 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
16 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301
17 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed
18 factual allegations but must provide the grounds for entitlement to relief and not merely a
19 "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v.*
20 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege "enough facts to state a
21 claim to relief that is plausible on its face." *Id.* at 1974.

22 In this case, neither Tahraoui's original complaint nor his FAC contain factual
23 allegations against Orbits or Pastor. Therefore, the Court dismisses Orbits and Pastor.
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25 With regard to the officers, Tahraoui fails to state a violation of federal law. On a
26 claim for retaliation, the conduct of the governmental agent or body must be sufficient "to
27 deter a person of ordinary firmness from exercising [their] First Amendment rights."
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1 *McKee v. Hart*, 436 F.3d 165, 170 (3d Cir. 2006). In this case, Tahraoui called various
2 county agencies to complain about officers that were investigating Tahraoui for theft.
3 The initial investigation occurred before Tahraoui's complaints. The fact that Tahraoui
4 was subsequently charged with the crime that lead to the substance of Tahraoui's
5 complaints is not an action that would deter a person of ordinary firmness from filing
6 complaints against police officers. Therefore, the Court dismisses Tahraoui's First
7 Amendment claim.

8 The Fourth Amendment protects an individual from unreasonable search and
9 seizure. *California v. Hodari D.*, 499 U.S. 621, 624 (1991). Tahraoui was neither
10 searched nor seized. Therefore, the Court dismisses his Fourth Amendment claim.

11 Alleged abuses of power by executive officials may support a cognizable claim as
12 a violation of substantive due process. *See County of Sacramento v. Lewis*, 523 U.S. 833,
13 846 (1998). A Fourteenth Amendment claim of this type is cognizable if the alleged
14 abuse of power "shocks the conscience" and "violates the decencies of civilized conduct."
15 *Id.* at 846 (internal quotations omitted). Government conduct is actionable if the conduct
16 is "intended to injure [the plaintiff] in some way unjustifiable by any government interest
17" *Id.* at 849.

18 In this case, Tahraoui has failed to allege any fact that shocks the conscience or
19 violates the decencies of civilized conduct. Moreover, the government officials' conduct
20 of investigating crime and prosecuting charges is a justifiable interest. Therefore, the
21 Court dismisses Tahraoui's due process claim under the Fifth and Fourteenth
22 Amendments. The remainder of the motion to dismiss is denied without prejudice.


23 If at any time before final judgment it appears that the district court lacks subject
24 matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c). The Court has
25 dismissed all of Tahraoui's federal claims and lacks subject matter jurisdiction.
26 Therefore, this matter shall be remanded.
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IV. ORDER

Therefore, it is hereby **ORDERED** that Original Defendants' motion to dismiss (Dkt. 4) is **GRANTED in part** and **DENIED in part**, Tahraoui's motion to amend complaint and extend deadline (Dkt. 10) is **DENIED as moot**, and Tahraoui's motion to accept late filing (Dkt. 11) is **GRANTED**. The Clerk shall remand this matter back to Pierce County Superior Court.

DATED this 13th day of February, 2012.


BENJAMIN H. SETTLE
United States District Judge